

**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Additional Estimates

2014 - 2015

**Department/Agency: APRA**

**Question: AET 42**

**Topic: Trio Capital**

**Reference: Hansard page no. 115 - 25 February 2015**

**Senator: Williams, John**

**Question:**

Senator WILLIAMS: In a case like this, when it is obvious there are problems. Can an application be made to AUSTRAC to freeze funds or bank accounts of suspected parties? If so, why wasn't it done in this case?

Mrs Rowell: I would have to take that on notice.

Senator WILLIAMS: No-one from the front seats there can help?

Mrs Rowell: No.

Senator WILLIAMS: Has any money been recovered out of this whole debacle? If so, where from and how much?

Mrs Rowell: Are you talking specifically about Ualan?

Senator WILLIAMS: About this whole Trio Capital issue.

Mrs Rowell: There has been money recovered. I could not tell you how much. I would need to take that on notice.

**Answer:**

**AUSTRAC**

The Australian Transaction Reports and Analysis Centre (AUSTRAC) cannot freeze funds or bank accounts. However the Australian Prudential Regulation Authority (APRA) can freeze a superannuation funds' assets, including bank accounts, but only after APRA commences an investigation into a fund.

In the case of the Trio Funds<sup>1</sup>, APRA commenced an investigation under the *Supervision Industry (Supervision) Act 1993* and issued directions dated 21 October 2009 to freeze the Trio Funds.

Freezing the assets ensured that assets remaining in the Trio Funds were not accessed or transferred elsewhere. However, freezing the assets did not assist in relation to the assets that had already left Australia, been 'invested' in overseas jurisdictions and have not been able to be recovered.

**Trio**

In October 2009 APRA commenced an investigation into Trio Capital and froze the assets of the Trio Funds<sup>2</sup> and Astarra Pooled Superannuation Trust to stop any further dealings by the then Trustee which might lead to further losses to members.

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<sup>1</sup> Astarra Superannuation Plan, Astarra Personal Pension Plan, My Retirement Plan, Employers Federation of NSW Superannuation Plan and Astarra Pooled Superannuation Trust.

<sup>2</sup> Astarra Superannuation Plan, Astarra Personal Pension Plan, My Retirement Plan, Employers Federation of NSW Superannuation Plan.

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In December 2009 APRA removed the Trustee, and appointed ACT Super Management Pty Ltd (ACT Super) as Acting Trustee. ACT Super's primary role was to determine the financial condition of the Funds and whether the appropriate action would be to wind-up the Funds.

ACT Super reached the conclusion that the Trio Funds had suffered losses and segregated the assets into two broad asset categories, unimpaired assets and impaired assets.

The total assets prior to ACT Super being appointed were reported as \$301.5m, consisting of \$213.2m of unimpaired assets and \$88.3m of impaired assets.

At the conclusion of its investigation, ACT Super had formed the view that a fraud had been perpetrated on the Trio Funds. Accordingly, ACT Super submitted two applications for compensation to the then Minister under Part 23 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) relating to the fraud within Trio Funds. As a result, the Minister approved compensation to Members totalling \$50.9m plus reimbursement of a portion of the acting trustee's expenses totalling \$20.8m.

ACT Super also determined that the previous trustee had made a financial commitment on behalf of the Trio Funds to provide two indemnities in relation to the Silverhall Residential Property Trust - Ualan investment, totalling \$8.2m.

ACT Super obtained legal advice which confirmed these two indemnities were commercial in nature and legally binding and the Trio Funds would most likely be liable for any call against those indemnities.

ACT Super entered and completed negotiations with the two parties to the indemnities, resulting in the recovery of \$4.9m out of the \$8.2m. After deduction of fees<sup>3</sup> members received the remaining balance of \$3.9m (plus interest).

Since its appointment, ACT Super has transferred \$232.9m of members' funds (including the Part 23 compensation) to either:

- the default fund, AMP Superannuation Savings Trust; or
- a member's alternative APRA/ATO regulated fund; or
- paid the monies direct to the member, after deduction of any relevant tax where a trigger event occurred under the SIS Act.

The amounts transferred included interest earned on the funds whilst they were held in the separate superannuation trust accounts.

In addition, since its appointment ACT Super has paid a further \$10.2m in pension and hardship claims.

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<sup>3</sup> As the negotiations took place in a Court arranged environment, the majority of fees incurred were due to legal costs.